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8 Attorneys for Plaintiffs,  
9 ARISTA RECORDS LLC; UMG  
10 RECORDINGS, INC.; SONY BMG  
11 MUSIC ENTERTAINMENT; and  
12 INTERSCOPE RECORDS

13 UNITED STATES DISTRICT COURT  
14 NORTHERN DISTRICT OF CALIFORNIA  
15 SAN FRANCISCO DIVISION

16 ARISTA RECORDS LLC, a Delaware limited  
17 liability company; UMG RECORDINGS, INC.,  
18 a Delaware corporation; SONY BMG MUSIC  
19 ENTERTAINMENT, a Delaware general  
20 partnership; and INTERSCOPE RECORDS, a  
21 California general partnership,

22 Plaintiffs,

23 v.

24 DARRYL HORVAT,

25 Defendant.

CASE NO. 3:08-01041-SC

**Honorable Samuel Conti**

***EX PARTE APPLICATION TO EXTEND  
TIME TO SERVE DEFENDANT AND  
[PROPOSED] ORDER***

1 Pursuant to Rules 4(m) and 6(b)(1)(A) of the Federal Rules of Civil Procedure, Plaintiffs  
2 respectfully request an additional 90 days – until September 18, 2008 – to serve Defendant Darryl  
3 Horvat (“Defendant”) with the Summons and First Amended Complaint. In support of their request,  
4 Plaintiffs state as follows:

5 1. Plaintiffs filed their initial Complaint against a John Doe defendant on February 21,  
6 2008. In order to obtain information sufficient to identify the Doe defendant, Plaintiffs also filed  
7 their *Ex Parte* Application for Leave to Take Immediate Discovery, seeking the Court’s permission  
8 to serve a Rule 45 subpoena on Defendant’s Internet Service Provider (“ISP”). On March 3, 2008,  
9 the Court issued its Order for Leave to Take Immediate Discovery, which was promptly served on  
10 the ISP along with a Rule 45 subpoena. On April 16, 2008, the ISP responded to Plaintiffs’  
11 subpoena, identifying the Defendant, Darryl Horvat.

12 2. After the ISP identified Mr. Horvat, Plaintiffs sent him a letter notifying him of  
13 Plaintiffs’ copyright infringement claim and inviting him to contact Plaintiffs to attempt to resolve  
14 the dispute. Mr. Horvat has not responded to Plaintiffs’ attempts to contact him, and, as a result, the  
15 parties have been unable to reach a settlement.

16 3. Accordingly, Plaintiffs filed a First Amended Complaint on May 27, 2008, naming  
17 Mr. Horvat individually as Defendant.

18 4. Plaintiffs have since made attempts to personally serve Defendant with process at the  
19 address provided by the ISP, but have so far been unsuccessful.

20 5. Plaintiffs conducted an online investigation and recently learned of a new address  
21 where Defendant may be living. Plaintiffs will continue to attempt to serve Defendant at both the  
22 address provided by the ISP and the newly discovered address.

23 5. The current deadline for service of process expires on June 20, 2008. Plaintiffs have  
24 not requested any previous extension of the service deadline. Given the circumstances of this case,  
25 Plaintiffs respectfully request an additional 90 days – until September 18, 2008 – to effectuate  
26 service, so that they may continue to attempt to serve Defendant.

27 6. Plaintiffs’ diligence in attempting to serve Defendant demonstrates “good cause”  
28 under Rule 4 for an extension of time for service. *See Gambino v. Village of Oakbrook*, 164 F.R.D.

271, 275 (M.D. Fla. 1995) (finding good cause to expand the time limit for service where plaintiff made a “reasonable effort to serve defendant”); *see also Matasareanu v. Williams*, 183 F.R.D. 242, 245-46 (C.D. Cal. 1998) (stating good cause standard for service extensions). In addition, unlike a traditional case where the defendant is known by name and service attempts can begin immediately after the complaint is filed, in this case Plaintiffs first had to obtain Defendant’s identity through the subpoena to the ISP. This Court has discretion to enlarge the time to serve even where there is no good cause shown. *Henderson v. United States*, 517 U.S. 654, 658 n. 5 (1996).

7. Because the copyright infringements here occurred in 2007, the three-year limitations period for these claims has not expired. *See* 17 U.S.C. § 507(b) (2000). Thus, there can be no prejudice to the defendant from any delay in serving the Complaint.

8. Plaintiffs will provide Defendant with a copy of this request and any Order concerning this request when service of process occurs.

Dated: June 18, 2008

HOLME ROBERTS & OWEN LLP

By: /s/ Dawniell Alise Zavala  
DAWNIELL ALISE ZAVALA  
Attorney for Plaintiffs

**~~PROPOSED~~ ORDER**

Good cause having been shown:

**IT IS ORDERED** that, pursuant to the Federal Rules of Civil Procedure, Rules 4(m) and 6(b)(1), Plaintiffs’ time to serve Defendant with process be extended to September 18, 2008.

Dated: 6/23/08

By: \_\_\_\_\_

